

**BG 99-1**

**Tax Type: BINGO/CHARITABLE GAMES**

**Issue: Revocation of Charitable Games Act License**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
C"HICCUP"GO, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	Docket No.	98-ST-0000
<b>OF THE STATE OF ILLINOIS</b>	)	License Nos.	P-0000 (pull tabs)
v.	)		B-0000 (bingo)
<b>"H.I.C.C.U.P.", INC.</b>	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** John Alshuler appeared for the Illinois Department of Revenue, Hazel "Hill" appeared for "H.I.C.C.U.P.", Inc.

**Synopsis:**

This matter arose after "H.I.C.C.U.P.", Inc. ("Hiccup") protested the Illinois Department of Revenue's ("Department") denial of its requests for renewal of its bingo and pull tabs licenses, previously issued to it pursuant to, respectively, the Illinois Bingo License and Tax Act ("Bingo Act"), 230 ILCS 25/1 *et seq.*, and the Illinois Pull Tabs and Jar Games Act ("Pull Tabs Act"), 230 ILCS 20/1 *et seq.* "HICCUP" claims that its renewal applications should have been approved, the Department argued that the renewals were properly denied.

The hearing was held on December 11, 1998, at the Department's Office of Administrative Hearings in Chicago. After considering the evidence adduced at hearing, I am including in this recommendation findings of fact and conclusions of law. I recommend the matter be resolved in favor of the Department.

**Findings of Fact:**

1. On May 7, 1998, the Department issued two letters to "HICCUP". One letter was a "DENIAL OF APPLICATION FOR RENEWAL OF BINGO LICENSE B-0000" (Department Ex. 1, p. 1); the other

was a "DENIAL OF APPLICATION FOR RENEWAL OF PULL TABS LICENSE P-0000".

Department Ex. 1, p. 2.

2. Each denial letter provided, in pertinent part:

This letter is to officially notify you that your organization's request for renewal of your bingo [pull tabs] license is officially denied.

Your organization's bingo [pull tabs] license expired May 15, 1997, and we received an incomplete renewal application on that date.

Letters were mailed to the address listed above on August 22, September 12, and November 7, 1997. As of this date, we have not received all the information necessary to process the application.

Department Ex. 1.

3. The Department's two denial letters were admitted at hearing under the certificate of the Director. Department Ex. 1; Hearing Transcript ("Tr.") pp. 12-13.
4. After "HICCUP's" pull tabs and bingo licenses expired, "HICCUP" named "Harold Hill" ("Hill") as the "HICCUP" member who would be in charge of selling pull tabs for "HICCUP", and as one of the operators of "HICCUP's" bingo games. Taxpayer Ex. 1, pp. 2, 4; Tr. p. 9 ("Hill").
5. "HICCUP" did not respond to the letters the Department sent to "HICCUP" after receiving "HICCUP"'s timely filed renewal applications, because the person who had been operating bingo and pull tabs games for "HICCUP" at that time was suffering from cancer. Tr. p. 19 ("Hill").
6. On or about October 1998, "HICCUP" caused to have prepared new application forms for the renewal of its bingo and pull tabs licenses. *See* Taxpayer Ex. 1, pp. 2, 4; Tr. pp. 20-21 ("Hill").
7. "Hill", on "HICCUP"'s behalf, submitted the October 1998 forms to the Department, with checks necessary to pay for the license renewals, but the Department did not accept those forms and checks. Tr. pp. 20-21 ("Hill").
8. On or about October 15, 1998, "HICCUP" caused to have prepared Department Forms RB-1 (Bingo Quarterly Tax Return) and PT-10 (Pull Tabs and Jar Games Quarterly Tax Return). *See* Taxpayer Ex. 3; Tr. p. 25 ("Hill"). Both returns covered the quarter ending 9/30/98. Taxpayer Ex. 3. The returns bore

original signatures in the "Paid tax preparer's" section, but were not signed by a "HICCUP" officer. Taxpayer Ex. 3, pp. 1-2.

9. "Hill" signed checks drawn on "HICCUP" accounts in the amount of the tax shown as being due on those RB-1 and PT-10 returns. Taxpayer Ex. 2. There was no evidence offered to show that "HICCUP" ever filed those returns or tendered those checks to the Department, as directed by the instructions printed on the returns, and as required for persons licensed under the Pull Tabs and Bingo Acts. Taxpayer Ex. 3, pp. 1-2; 230 ILCS 25/3 (requires that bingo quarterly returns be filed and payments made via money order or certified check); 230 ILCS 20/5 (same requirements for pull tabs returns).
10. On the RB-1 return, "HICCUP" reported that it conducted weekly bingo games during the period from 8/7/98 through 9/14/98. Taxpayer Ex. 3, p. 1. On the PT-10 return, "HICCUP" reported that it sold pull tabs at weekly events from 8/7/98 through 9/18/98. Taxpayer Ex. 3, pp. 3-4.
11. At different times during the hearing, counsel for the Department asserted that taxpayer's licenses had been suspended (Tr. p. 4) and revoked (Tr. pp. 27-29), although no competent evidence of either a suspension or a revocation was ever offered. Department Ex. 1; Tr. p. 27. No competent evidence was offered to show that the Department ever notified "HICCUP" that it would seek to suspend or revoke "HICCUP's" licenses, as is required by the Department's bingo and pull tabs rules. 86 Ill. Admin. Code §§ 430.190(c)-(d), 432.190(c)-(d).
12. "HICCUP" did not introduce as evidence at hearing the materials and information required to be submitted with its renewal applications, as set forth in the Department's bingo and pull tabs rules. *See* 86 Ill. Admin. Code §§ 430.110(b), 432.110(b).

### **Conclusions of Law:**

To establish the correctness of the Department's decision to deny "HICCUP's" renewal applications, counsel introduced, under the certificate of the Director, a copy of the two letters it issued to "HICCUP" to notify it that its renewal applications were "officially denied." Department Ex. 1; Tr. pp. 12-13 (the alj, explaining to "Hill" why the Department wanted to offer exhibit number 1 into evidence). Those denials set forth two — and only two — bases for the Department's denial of "HICCUP's" applications. First, the

Department stated that the renewal applications "HICCUP" timely submitted were incomplete, and second, the Department wrote that "HICCUP" failed to respond to requests for information "necessary to process ["HICCUP's"] application[s]." Department Ex. 1. After the Department introduced those denials, the burden shifted to "HICCUP" to establish, by a preponderance of evidence, that it was eligible for the renewal of its licenses. *See* 5 ILCS 100/10-15 (standard of proof in set forth in the Illinois Administration Procedures Act).

Shortly after Hazel "Hill" began to offer testimony to show why "HICCUP's" renewal applications should be granted, counsel for the Department departed from the stated bases for the Department's denials, and began to argue that the hearing should be conducted as though it were something akin to a revocation hearing. For example, counsel argued:

... I have to object to any evidence with regard to the propriety of Ms. "Hill" to operate the game at some point prior to today. That's not the question. *The question is whether or not the game was operated properly prior — at the time that it was licensed. And frankly, the Department takes the position that it was not.*

And that was one of the reasons why the license was not renewed, although not the only reason. There is — subsequently there was a reason — *there were reasons having to do with the fact that they didn't provide sufficient information to substantiate that the game had been run — or that they had been acting properly during the period that the license was in effect.*

So I am simply saying in summary that I think we should confine ourselves to the question of whether or not the Department improperly or properly for that matter refused to renew the license that was in effect through May 15, 1997.

Tr. p. 18 (emphasis added).

Counsel, however, never introduced any competent evidence to support his assertions that "HICCUP" somehow performed misdeeds regarding its operation of games during the period its licenses were in effect. And while "HICCUP" later offered evidence tending to establish that, after its licenses expired, it performed acts for which the Department could have exercised its discretion, and, among other things, sought to suspend or revoke "HICCUP's" licenses (230 ILCS 20/6; 230 ILCS 25/4, 25/4.1, 25/5), there was never any evidence introduced to show that the Department ever notified "HICCUP" that it intended to suspend or revoke "HICCUP's" licenses. Fundamental principles of due process, and the Department's own bingo and pull tabs rules, require the Department to give notice to the person whose license(s) it seeks to suspend or revoke.

Balmoral Racing Club v. Illinois Racing Board, 151 Ill. 2d 367, 408 (1992) (reasonable notice is “[a]mong the guarantees without which there would be an absence of procedural due process ....”); 86 Ill. Admin. Code §§ 430.190(c)-(d); 432.190(c)-(d).

Returning, then, to the reasons the Department actually asserted in the notices it issued to "HICCUP", the Department's bingo and pull tabs regulations also detail the materials and information a licensee must submit as part of an application for license renewal. 86 Ill. Admin. Code §§ 430.110(b)-(c); 432.110(b)-(c). The Illinois General Assembly granted the Department authority to create such requirements pursuant to § 3 of the Pull Tabs Act, and pursuant to § 1 of the Bingo Act. 230 ILCS 20/3; 230 ILCS 25/1.

Section 110 of the Department's bingo regulations provide, in pertinent part:

- b) Applications. Application for a regular license must be made on the form prescribed by the Department, and must be accompanied by a license fee of \$200 in the form of a certified check or money order payable to the Illinois Department of Revenue. *The Department will not consider applications which are not substantially complete, or which are not accompanied by the information described below.*
    - 1) Renewal applications. An application for renewal of a current regular license must be accompanied by the following information:
      - A) A report, on a form provided by the Department or on a reasonable facsimile thereof, which contains the same information requested on the Department's form, accounting for the disposition of the gross proceeds derived from bingo during the period covered by the report.
      - B) The names of the members of the organization and the auxiliary organization ... who will be workers at the bingo sessions (other than the "Operators" whose names are shown on the application form). A presiding officer or operator of the organization must certify that the listed members have belonged to the organization for at least 30 days prior to participation in the organization's bingo sessions;
      - C) Any other information requested by the Department which is necessary to establish the continued eligibility of the organization for a regular license.
- \* \* \* \*
- c) Each regular license shall be valid for one year from its date of issuance. It is the policy of the Department to mail a renewal application to each regular licensee at least 30 days prior to the expiration of the license. However, failure to receive a renewal application does not excuse a licensee of its obligation to submit a substantially complete renewal application prior to the expiration of its current license. *If the licensee fails to file a substantially complete renewal application prior to the expiration of its license, it must cease bingo activities until a renewal license is issued.*

86 Ill. Admin. Code § 430.110 (b)-(c); 18 Ill. Reg. 12539 (eff. August 2, 1994) (emphasis added).

Section 110 of the Department's pull tabs rules provides, in pertinent part:

- b) Applications. Application for a regular license must be made on the form prescribed by the Department, and must be accompanied by a license fee of \$500 in the form of a check or money order payable to the Illinois Department of Revenue, and by the following documents and information:
- 1) Documentary evidence sufficient to show that the organization meets the eligibility requirements of subsection (a) above. Such documentation should include, when applicable, a copy of the organization's bylaws, constitution, charter, minutes of past meetings, promotional materials, and Articles of Incorporation;
  - 2) The names of the members of the organization who will participate in the sale of pull tabs. The presiding officer of the organization must certify that the persons listed are eligible to sell pull tabs, and have been members of the organization for at least 30 days before participating in the organization's sale of pull tabs;
  - 3) *For license renewal applications, a report, on a form provided by the Department, accounting for the disposition of the gross proceeds derived from the sale of pull tabs during the period covered by the report (see Section 432.180);*
  - 4) Any other information requested by the Department which is necessary to establish the eligibility of the organization for a regular license;
  - 5) If, during a license year, any of the information provided to the Department by the licensee changes, the licensee must notify the Department within 20 days, in writing, of any such changes;

\* \* \* \*

c) Licenses. *Within 30 days after the receipt of a completed application, the Department will attempt to approve or deny the application. If the Department determines that an organization meets all of the eligibility requirements of this Section, and is not ineligible for any of the reasons stated in Section 432.150, the Department will issue a regular license to the organization. If the Department does not respond prior to expiration of the current license, the licensee is no longer authorized to conduct pull tab sales until such time as authorization is received.* \* \* \* \*

- 1) No organization may begin to sell pull tabs without having a valid license in its possession.

\* \* \* \*

- 2) Each license shall be in effect for one year from its date of issuance unless suspended or revoked by the Department before that date. After June 30, 1990, every new license shall expire one year from the date of issuance unless suspended or revoked. The Department cannot prorate the \$500 license fee when a license is issued for less than a full year.
- 3) It is the Department's policy to mail a renewal application to each regular licensee at least 30 days prior to the expiration of the license. However, failure to receive a renewal application does not excuse an organization of its obligation to submit a renewal application prior to the expiration of its current license. *If the licensee fails to file a substantially complete renewal application prior to the expiration of a license, the organization may continue to sell pull tabs until the Department takes action on the renewal application. If the Department receives a renewal application more than seven days after the expiration of a license, the organization*

*must immediately discontinue the sale of pull tabs until it receives a renewed license from the Department. It must discontinue the sale of pull tabs until a renewal license is issued.*

86 Ill. Admin. Code § 432.110(b)-(c); 18 Ill. Reg. 11636 (eff. July 7, 1994) (emphasis added).

Since "HICCUP's" original application forms, and/or other materials (if there were other materials) timely submitted to the Department by "HICCUP" are not in the record, I do not know why the Department thought the renewals were incomplete, let alone, whether the Department was correct when it made that decision. Therefore, this recommendation is based on my comparison of the evidence "HICCUP" presented at hearing with the materials required to be submitted as part of a licensee's renewal application, pursuant to the Department regulations quoted above.

The materials "HICCUP" admitted at hearing do not include a report accounting for the disposition of the gross receipts "HICCUP" received from conducting bingo games during the prior year. *See* 86 Ill. Admin. Code §§ 430.110(b)(1)(A); 430.180(a). Nor did "HICCUP" introduce a list of the "HICCUP" members who would volunteer as workers at the bingo games scheduled, and the accompanying certification, by "Hill" or a presiding "HICCUP" officer, that such persons had been members for at least 30 days prior to the scheduled bingo games. 86 Ill. Admin. Code § 430.110(b)(1)(B). Additionally, "HICCUP" did not offer substantially the same type of documents, as detailed in the Department's pull tabs rules. *See* 86 Ill. Admin. Code §§ 432.110(b)(2) (list of volunteers and certification of their membership with "HICCUP"), 432.110(b)(3) (report accounting for disposition of funds from pull tabs sales). Those materials are required to be made part of a licensee's renewal application, and they were not offered by "HICCUP" at hearing. Therefore, I cannot recommend that "HICCUP's" renewal applications be granted at this time.

#### **Conclusion:**

I recommend the Director uphold the Department's denials of "HICCUP's" pull tabs and bingo license renewal applications.

Date

Administrative Law Judge



